

AMENDED IN ASSEMBLY JANUARY 4, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1588

Introduced by Assembly Member Negrete McLeod

February 22, 2005

~~An act to add Section 11340.95 to the Government Code, relating to administrative agencies. An act to amend Section 473.3 of the Business and Professions Code, relating to licensing boards.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as amended, Negrete McLeod. ~~Administrative agencies: regulations: compliance. Professional licensing boards: review and repeals.~~

Existing law creates various boards and programs to license and regulate professions and vocations and other matters. Existing law establishes the Joint Committee on Boards, Commissions, and Consumer Protection and, until January 1, 2012, requires the committee to hold public hearings and evaluate whether a board or program has demonstrated a need for its continued existence. Existing law gives each board and program the burden of demonstrating, among other things, that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

This bill would also give each board or program the burden of demonstrating that its enforcement function is the least restrictive regulation consistent with the purpose of protecting and promoting public health, safety, and welfare.

~~Existing law prohibits any state agency, as defined, from issuing, utilizing, enforcing, or attempting to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is a regulation, as defined, unless it has been adopted as~~

a regulation, as specified. Existing law exempts from this requirement any form prescribed by a state agency or any instructions relating to the form, but provides that this provision is not a limitation on the requirement that a regulation be adopted when one is needed to implement the law under which the form is issued.

~~This bill would provide that any person or entity that complies with lawful administrative guidance, including, but not limited to, rules, forms, regulations, bulletins, lawful written directives, and other written communications, shall be rebuttably presumed to have complied with the law or regulation upon which the guidance was based. It would prohibit a state agency or official from imposing any sanction upon a person or entity that reasonably relies upon that guidance, provided that the acts taken in reliance on that guidance were performed before any substantive change in the law or regulation upon which the guidance was based.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 473.3 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 473.3. (a) Prior to the termination, continuation, or
- 4 reestablishment of any board or any of the board's functions, the
- 5 Joint Committee on Boards, Commissions, and Consumer
- 6 Protection shall, during the interim recess preceding the date
- 7 upon which a board becomes inoperative, hold public hearings to
- 8 receive testimony from the Director of Consumer Affairs, the
- 9 board involved, and the public and regulated industry. In that
- 10 hearing, each board shall have the burden of demonstrating a
- 11 compelling public need for the continued existence of the board
- 12 or regulatory program, and that its licensing *and enforcement*
- 13 function is the least restrictive regulation consistent with the
- 14 *purpose of protecting and promoting* public health, safety, and
- 15 welfare.
- 16 (b) In addition to subdivision (a), in 2002 and every four years
- 17 thereafter, the committee, in cooperation with the California
- 18 Postsecondary Education Commission, shall hold a public
- 19 hearing to receive testimony from the Director of Consumer
- 20 Affairs, the Bureau for Private Postsecondary and Vocational

Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the *purpose of protecting and promoting* public health, safety, and welfare.

(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

(d) In addition to subdivision (a), in 2003 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the Bureau of Automotive Repair. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the *purpose of protecting and promoting* public health, safety, and welfare.

(e) The committee shall evaluate and review the effectiveness and efficiency of the Bureau of Automotive Repair based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

~~SECTION 1. Section 11340.95 is added to the Government Code, to read:~~

~~11340.95. (a) The Legislature finds and declares that individuals and businesses should not be punished for following lawful procedures and guidance provided by administrative bodies.~~

~~(b) Any person or entity that complies with lawful administrative guidance, including, but not limited to, rules,~~

1 ~~forms, regulations, bulletins, lawful written directives, and other~~
2 ~~written communications, shall be rebuttably presumed to have~~
3 ~~complied with the law or regulation upon which the guidance~~
4 ~~was based. No state agency or official shall impose any sanction~~
5 ~~upon a person or entity that reasonably relies upon that guidance,~~
6 ~~provided that the acts taken in reliance on that guidance were~~
7 ~~performed before any substantive change in the law or regulation~~
8 ~~upon which the guidance was based.~~